

**38 CFR Part 8****RIN 2900-AR53****National Service Life Insurance - Veterans Affairs Life Insurance (VALife) Program
Amendments****AGENCY:** Department of Veterans Affairs.**ACTION:** Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations that govern National Service Life Insurance (NSLI), among other things, to accomplish the following: implement provisions contained in legislation that authorized a new program of insurance; clarify which individuals are eligible to take actions on an insurance policy; elucidate on various provisions regarding coverage and benefits under the new insurance program; and state which individuals are ineligible to benefit from the unlawful and wrongful killing of a veteran policyholder.

DATES: Comments must be received on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: Comments may be submitted through www.regulations.gov. Comments should indicate that they are submitted in response to “RIN 2900-AR53 – National Service Life Insurance – Veterans Affairs Life Insurance (VALife) Program Amendments.” Comments received will be available at [regulations.gov](https://www.regulations.gov) for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Paul Weaver, Insurance Specialist, Department of Veterans Affairs Insurance Service (310/290B), 5000 Wissahickon Avenue, Philadelphia, PA 19144, (215) 842-2000, ext. 4263. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Section 1922B of title 38, United States Code, requires VA to issue policies under a new program of veterans' life insurance beginning on January 1, 2023. Consistent with 38 U.S.C. 1922B and other statutes in the NSLI subchapter (38 U.S.C. 1901-1929), VA proposes to implement this new program of insurance by amending 38 CFR part 8 as set forth below.

1. Definition of Part 8 Terms.

Guardian

Current 38 CFR 8.0(e) defines the term "guardian" to mean "any representative certified by the appropriate Veterans Service Center Manager, under [38 CFR 13.55], to receive benefits in a fiduciary capacity on behalf of the insured or the beneficiary, or to take the actions listed in [38 CFR] 8.32." We note that § 13.55 was removed in 2018, see 83 FR 32716, 32738 (July 13, 2018), but current § 8.0(e) essentially refers to a VA-appointed fiduciary, as defined in current § 13.20 (defining the term "fiduciary" as "an individual or entity appointed by VA to receive VA benefits on behalf of a beneficiary for the use and benefit of the beneficiary and the beneficiary's dependents"). The current definition of "guardian," therefore, only allows a VA-appointed fiduciary to take the actions that are enumerated in § 8.32. Some of these actions include applying for a life insurance policy, reinstating a lapsed policy, and cash surrendering a policy. 38 CFR 8.32(a), (b), (f). Private insurers allow state-appointed guardians and attorneys-in-fact who hold power of attorney for an individual as their principal to take these same

actions. VA proposes to revise § 8.0(e) to include within the definition of the term “guardian,” not only VA-appointed fiduciaries, but also state-appointed guardians and conservators, as well as attorneys-in-fact (i.e., persons holding power of attorney). However, VA also proposes to clarify that if a VA-appointed fiduciary and either a state-appointed guardian/conservator or attorney-in-fact are not the same individual and both attempt to take conflicting actions on an incompetent insured’s policy, the VA-appointed fiduciary shall have the exclusive authority to take actions on the policy. In that scenario, VA would not allow the state-appointed guardian/conservator or attorney-in-fact to take actions on the insurance policy unless VA removes the policyholder’s fiduciary or the state-appointed guardian/conservator or attorney-in-fact is appointed as the VA fiduciary. These amendments would align VA procedures with commercial insurance practices and would afford those caring for incompetent insureds—whether they are VA-appointed fiduciaries, state-appointed guardians/conservators, or attorneys-in-fact—greater authority over VA life insurance actions. The amendments would also resolve potential conflicts between a VA-appointed fiduciary and either a state-appointed guardian/conservator or an attorney-in-fact.

Veterans’ Affairs Life Insurance (VALife)

VA proposes to add a new paragraph (f) to 38 CFR 8.0 that would define the term “Veterans’ Affairs Life Insurance (VALife)” to mean “insurance that is issued under section 1922B of title 38 U.S.C.” The title of the legislation that created VALife, “Modernization of Service-Disabled Veterans Insurance,” and its statutory heading in section 1922B, “Service-Disabled Veterans Insurance,” are similar to the name of VA’s existing life insurance program for service-disabled veterans, which Congress renamed “Legacy Service-Disabled Veterans’ Insurance” when it authorized the creation of VALife. See 38 U.S.C. 1922; Pub. L. 116-315, Title II, § 2004(b)(1), (c)(1) (2021). VA has issued policies for Legacy Service-Disabled Veterans’ Insurance, formerly known

as Service-Disabled Veterans' Insurance (SDVI), since 1951 and will continue to provide such insurance coverage even after it closes to new issues on December 31, 2022. See 38 U.S.C. 1922(d)(1) ("The Secretary may not accept any application by a Veteran to be insured under this section after December 31, 2022."). Policyholders could be confused by the similarities in program names and legislative and statutory headings. For purposes of clarity, VA proposes to define VALife to mean the new program of life insurance authorized by 38 U.S.C. 1922B to distinguish it from the renamed SDVI program.

Application for Insurance Issued under 38 U.S.C. 1922B

VA would require veterans applying for VALife to submit an application online or through another medium prescribed by the Secretary. Therefore, VA proposes to add a new paragraph (g) to § 8.0 that would define an application for VALife as a properly completed application form submitted online or through another medium prescribed by the Secretary. *Cf.* 84 FR 138, 139 (Jan. 18, 2019) (defining a "claim" for benefits under 38 CFR part 3); *see also, e.g., Veterans Justice Grp., LLC v. Sec'y of Veterans Affairs*, 818 F.3d 1336, 1350 (Fed. Cir. 2016) (holding that 38 U.S.C. 5101(a)(1) affirmatively grants the Secretary authority to prescribe the forms of application by claimants).

Beneficiary

VA proposes to define the term "beneficiary" that is contained in 38 U.S.C. 1922B(e) to include both principal and contingent beneficiaries. Although section 1922B(e) refers broadly to "a beneficiary," we interpret that reference to include both principal and contingent beneficiaries because both commercial industry insurers and all existing Government life insurance programs allow insureds to name both types of beneficiaries. In the event that the insured has designated a contingent beneficiary, and the principal beneficiary does not file a claim, predeceases the insured, or is barred from receiving payment by operation of the slayer's rule, then the contingent beneficiary

will be paid before an alternate beneficiary in the order of precedence is eligible to file a claim and receive payment.

2. Effective Date for an Insurance Policy Issued under 38 U.S.C. 1922(a) or 1922B.

Current 38 CFR 8.1(b) states that the effective date of an insurance policy that is issued under 38 U.S.C. 1922(a) is the date that a valid application and premium payment are delivered to VA. VA proposes to amend the heading of current 38 CFR 8.1 to clarify that insurance policies issued under VALife would have the same effective date as policies issued under SDVI. This amendment is consistent with the longstanding VA practice of determining the effective date of coverage for other Government life insurance programs based on the delivery of an application and an initial premium payment. However, we propose to revise § 8.1(a) to clarify that benefits due under an SDVI policy are payable any time after the effective date, but benefits due under a VALife policy are payable any time two years after the effective date.

VA also proposes to add a note 3 to current paragraph (b) that would state that when veterans apply for insurance coverage through an electronic medium, the date of delivery of the premium payment shall be the date of the valid authorization of the premium payment. The note would also state that in cases where the authorization does not result in the required premium payment because there were insufficient funds to cover the full initial premium amount, the delivery date of the premium payment shall be the date that the full initial premium amount is received by VA.

Current paragraph (c) provides three different options for SDVI policyholders to choose as an effective date other than the date of delivery described in paragraph (b). VA proposes to clarify that the effective date options for SDVI would not be available for VALife, and, therefore, VA would amend paragraph (c) to state that it does not apply to VALife.

3. Provisions During Waiting Period.

Section 1922B(c)(3)(A) states that if a veteran dies during the two-year period described in paragraph (2), the Secretary shall pay to the beneficiary of the veteran the amount of premiums paid by the veteran under this section, plus interest. VA proposes to add a new paragraph (e) to current 38 CFR 8.2 to explain that if a veteran enrolls in VALife for an amount less than the statutory maximum and elects to apply for additional coverage at a later date and dies before completing the two-year waiting period for the additional VALife coverage amount, the beneficiary shall be refunded premiums that were paid for the additional VALife coverage, plus interest, in accordance with 38 U.S.C. 1922B(c)(3)(A). VA also proposes to explain in new paragraph (e) that if an insured surrenders or cancels a VALife policy during this same two-year period, the United States would not return to the insured the premiums that were paid to purchase the coverage. VA's proposal is consistent with the practice of commercial insurers, as comparable permanent insurance policies do not return the full amount of premiums that an insured pays when the insured surrenders policy coverage during the policy's waiting and enrollment period.

4. Calculation of Time Period and Veteran's Age.

Current § 8.6 establishes the rules for calculating the time period for applying and reinstating life insurance coverage and paying premiums. VA proposes to revise the title of § 8.6 to read "Calculation of Time Period; Veteran's Age," designate the current text as paragraph (a), and make some technical edits to the text in re-designated paragraph (a). Section 1922B(a)(3)(A) requires that veterans apply for VALife coverage prior to age 81, except in limited circumstances described in subparagraph (B). VA proposes to add new paragraph (b) to § 8.6 to state as follows: "For VALife, the premium will be determined using the age of the veteran at his or her nearest birthday on the effective date of the policy." If the veteran's next birthday is within six months of the effective date of the policy, his or her premium will be calculated at one year older than the current

age. If the veteran's birthday is more than six months after the effective date of the policy, his or her current age will be used to calculate the premium. For example, if the veteran's birthday is February 16, 1980, and the effective date of the policy is June 1, 2022, the premium age is 42. However, if the same veteran's policy's effective date is December 1, 2022, the premium age is 43. When VA developed VALife, VA actuaries established the premium table for the insurance program using this standard because it is consistent with commercial life insurance practices and with VA's currently administered programs. However, VA proposes, for the purposes of determining a veteran's eligibility for insurance under section 1922B(a)(3), to use the age of the veteran at his or her last birthday prior to application because it would provide a veteran approaching age 81 with additional time to elect insurance coverage and still be consistent with the VALife statute (38 U.S.C. 1922B(a)(3)(B)). VA proposes to add a new paragraph (c) to make this clarification. Although these proposed amendments contain different standards, it is common in the private insurance market for the term "age" to have a variety of meanings for insurance calculations (see 12A Couch on Ins. § 179:13, n.1.), and VA is explaining in this proposed rulemaking how it would calculate the insured's age for different purposes.

VA also proposes to add a new paragraph (d) that would clarify under what conditions a veteran who is beyond age 81 would be eligible to receive VALife coverage. The VALife statute states that "[t]he Secretary may not grant insurance to a veteran . . . unless . . . the veteran submits the application for such insurance before the veteran attains 81 years of age [or] . . . with respect to a veteran who has attained 81 years of age . . . the veteran filed a claim for compensation under chapter 11 of this title before attaining such age . . . [and] based on such claim, and after the veteran attained such age, the Secretary first determines that the veteran has a service-connected disability." 38 U.S.C. 1922B(a)(3). VALife was created to replace SDVI, and

under SDVI, a veteran can be granted insurance if he or she applies within two years following an initial service-connection determination for any disability. 38 U.S.C. 1922(a). However, eligibility for SDVI is not restricted to the two-year period following the veteran's first service-connection determination. VAOPGCPREC 77-90 (finding of service connection for a disability on a secondary basis establishes a new period for filing an application for SDVI). Although veterans are not eligible for SDVI by reason of an increase in a rating, see *id.*, a grant of individual unemployability under 38 CFR 4.18, or a finding of incompetency under 38 CFR 3.353, the two-year period to apply for SDVI is not limited by age, and a veteran who receives a grant of service connection for a new and different disability becomes eligible again to apply for SDVI. Consistent with Congressional intent in allowing issuance of SDVI coverage at advanced ages following an initial determination of service connection for a disability, VA proposes to allow any veteran who applies for service connection for a disability, either on a primary or secondary basis, before attaining age 81 but receives an initial grant on that claim after attaining age 81 to apply for VALife if the veteran otherwise meets the criteria of 38 U.S.C. 1922B(a)(3)(B). For example, a veteran who applies for service connection for a disability at age 79, but does not receive an actual grant of service connection on that claim until the age of 82, would have a two-year time period to apply for VALife and would receive full VALife coverage if they paid their premiums throughout the requisite two-year waiting period. VA's interpretation of this section of the VALife statute would encourage participation in VALife and provide life insurance coverage to veterans who are unlikely to be able to purchase life insurance in the private, commercial market due to their age and disabilities.

VA also proposes to limit the issuance of a VALife policy under 38 U.S.C. 1922B(a)(3)(B) to a maximum age of 95. This proposal aligns the maximum issue age for a VALife policy with the maximum issue age of an SDVI ordinary life policy, as

determined by VA in line with common industry practice to ensure financial soundness and based on the 1941 Commissioners Standard Ordinary Table of Mortality, which is referenced in 38 U.S.C. 1922. VALife's guaranteed acceptance whole life coverage most closely mirrors ordinary life policies issued under the SDVI program, which is being closed and replaced with the new program.

5. Reinstatement Period.

Current 38 CFR 8.7 allows a policyholder to reinstate coverage within five years of the date of lapse of coverage if the policyholder submits all outstanding premiums and evidence of good health and pays interest on the arrearage if not reinstated within six months from lapse. VA proposes to revise § 8.7(a) to indicate that the paragraph does not apply to VALife policies. In conjunction with that change, VA proposes to add a new paragraph (e) to § 8.7 to state that coverage issued under VALife that lapses for non-payment of premiums may only be reinstated if the former policyholder submits all premiums in arrears from their respective due dates, plus interest, to reinstate the coverage within two years of the date of the lapse and has not yet attained the age of 81. This two-year period is consistent with the two-year enrollment and waiting period from the effective date of a VALife policy until the coverage can pay a death benefit (38 U.S.C. 1922B(c)(2)) and is intended to incentivize policyholders with lapsed policies to reinstate coverage as soon as possible after lapsing. VA believes that a shorter reinstatement period is also warranted because VA would not require policyholders to submit proof of insurability to reinstate coverage. Veterans who do not reinstate VALife coverage within this two-year period would remain eligible to reapply for VALife but would be required to wait two years between their re-enrollment date and the date the full VALife coverage amount takes effect.

VA is proposing in new § 8.7(e) to make the maximum age for reinstatement age 80, which is our publicized maximum issue age for VALife. This is consistent with the

practice of the commercial insurance industry, in which most companies do not allow reinstatement beyond the maximum issue age for their products. While we are allowing issues up to age 95 for VALife, that is only for the category of veterans who applied for service connection for a new condition prior to age 81 but did not receive notification of an initial award for that new condition until after attaining age 81. Given that we are not requiring proof of satisfactory health as a condition for reinstatement, the maximum age limitation, in addition to the two-year time limit after lapse to apply, will mitigate the risk of anti-selection.

For clarity, VA also proposes to revise the heading of § 8.7 from “Reinstatement of National Service Life Insurance except insurance issued pursuant to section 1925 of title 38 U.S.C.” to “Reinstatement.”

6. New Program of Insurance Is Not Participating.

Paragraph (a)(3) of 38 CFR 8.10 states that Government life insurance programs issued under 38 U.S.C. 1904(c) and 1922(a) do not pay dividends. VALife is only authorized to issue coverage on a non-participating basis (38 U.S.C. 1922B(a)(5)(A)(i)), which means that the new insurance program would not issue policies that pay dividends to its policyholders. See 5 Couch on Ins. § 69:46 n.1 (participating plan provides for a refund of a portion of the premium as a dividend at the end of the policy period). For purposes of clarity, VA proposes to revise paragraph (a)(3) by adding a reference to section 1922B.

7. Surrender of VALife Coverage; Development of VALife Cash Values.

VA proposes to clarify that § 8.11(a) and (b), which provides that cash value, paid-up insurance, and extended term insurance, except as provided in § 8.14(b), shall become effective at the completion of the first policy year on certain NSLI plans and explains the process for requesting a cash surrender, respectively, would not apply to VALife.

VA also proposes to amend § 8.11 to add a new paragraph (j) stating that cash values for VALife would be developed using the 1941 Commissioners Standard Ordinary Mortality Table (1941 CSO Table) and an interest rate of 3.5 percent per annum. The 1941 CSO Table is the same mortality basis as that prescribed for cash values in SDVI (38 U.S.C. 1922(a)(1)).

VA would also state in the new paragraph (j) that VA would not be obligated to pay cash value in the event of lapse or surrender during the two-year waiting period prior to VALife coverage becoming payable for a death benefit because cash value does not begin to accrue until the two-year waiting period elapses. Additionally, if an insured enrolls in VALife for an amount less than the statutory maximum and elects to apply for additional coverage at a later date, the cash value on the additional amount of coverage would not begin accruing until the end of the two-year waiting period for the additional coverage. Full coverage would not be in force under VALife until the two-year waiting period has been completed. See 38 U.S.C. 1922B(c)(2). And consistent with other life insurance programs currently administered by VA, VA would transfer any premiums paid for coverage that lapses or is surrendered, to the credit of the VALife revolving fund that is established under 38 U.S.C. 1922B(a)(5)(A)(i) to support the financial health of VALife.

VA would also explain in new paragraph (k) the process for an insured to cash surrender a policy and the process to issue the surrender value of the policy to the insured. VA would apply a process similar to cash surrenders under existing policies as explained in § 8.11(b), with the following differences: 1) applications would be primarily through an electronic medium in order to decrease administrative costs; and 2) indebtedness and paid up additions would not apply as the VALife program does not initially plan to provide policy loans and is a non-participating program without dividends. Dividends are required in order to issue paid up additions.

For clarity, VA also proposes to revise the heading of this section from “Cash value and policy loan” to “Cash value.”

8. Policy Loans.

Section 1906 of title 38, United States Code, permits VA to establish regulations pertaining to loans. VA has implemented that authority in 38 CFR 8.13, and paragraph (a) of that section requires VA to lend to an insured monies borrowed against the security of the cash value of his or her insurance coverage, subject to the insured meeting various criteria. VALife is designed to be completely self-supporting, unlike other programs of NSLI which receive an annual subsidy to cover excess claims expenses. See 38 U.S.C. 1919(a) (authorizing appropriation for NSLI), 1922(a)(5) (authorizing appropriations in part for SDVI). Because VA has determined that it would not be actuarially sound to offer loans under VALife at its inception on January 1, 2023, VA proposes to amend § 8.13 by adding a new paragraph (e) that would state that the United States shall only issues loans to VALife policyholders if VA determines that doing so is administratively and actuarially sound for the VALife Program.

9. Extended Term and Paid-Up Insurance.

Under 38 CFR 8.14 and 8.15, insureds who fail to pay premiums do not go into lapse status and instead remain covered under their policies according to the extended term value of their coverage, or their coverage amount is reduced to a level that is consistent with the policyholder’s accrued cash value. Both regulations were promulgated to prevent life insurance coverage from lapsing and are consistent with the intent of preventing policyholders from going into lapse status. However, VA proposes to add language to each section stating that, for purposes of VALife, such extended term or reduced paid-up insurance would not be available to veterans during the VALife two-year waiting period. VA also proposes to add language clarifying that as soon as the two-year waiting period ends, VALife policyholders would enjoy the protection of

extended term and reduced paid-up insurance coverage that both sections provide to policyholders covered under other Government life insurance programs.

10. Slayer's Rule Exclusion.

The Federal common-law slayer's rule is a public policy that precludes killers from benefitting from their victims' deaths. 76 FR 77455 (Dec. 13, 2011). The statutes governing the NSLI programs of life insurance are silent regarding whether a beneficiary who killed the decedent, or a family member of such a beneficiary, may receive the proceeds of the victim's insurance coverage. Some courts have applied the slayer's rule to claims for NSLI proceeds. *Shoemaker v. Shoemaker*, 263 F.2d 931 (6th Cir. 1959). However, there are a variety of different requirements for applying the slayer's rule depending on the state where the killing occurred. See Annot., 26 A.L.R.2d 987 (1952 & 1998 Supp.); 4 Couch on Ins. § 62:19. Therefore, VA believes it is necessary to establish a uniform Federal rule for applying the slayer's rule to Government life insurance death proceeds for all NSLI policies, including VALife. VA has previously codified a slayer's rule in 38 CFR 9.5 that pertains to the payment of death proceeds under Servicemembers' Group Life Insurance. For purposes of consistency, VA proposes to amend 38 CFR 8.19 to designate the existing text as paragraph (a) and to create a new paragraph (b) that would state that where a beneficiary has been determined to have intentionally and wrongfully killed the insured, the provisions found in 38 CFR 9.5(e) shall be applied to payment of insurance. Under what is known as the extended slayer's rule, some jurisdictions also disqualify members of a slayer's family, other than individuals also related to the victim, from receiving the proceeds of an insurance policy. 76 FR 77455. Consistent with § 9.5(e)(2), VA proposes to incorporate the extended slayer's rule into 38 CFR 8.19 in order to prevent killers from receiving even the indirect benefits of their wrongdoing by receiving or inheriting, through relatives, the financial benefits of the killing.

11. Eligibility for Those Insured under 38 U.S.C. 1922(a) to Purchase VALife after December 31, 2025; Increases in VALife Coverage.

Veteran policyholders insured under 38 U.S.C. 1922(a) are eligible to maintain their insurance coverage during the initial two-year VALife enrollment period if they apply for VALife between January 1, 2023, and December 31, 2025. 38 U.S.C. 1922(d)(2)(A), (B). Although 38 U.S.C. 1922(d)(3) states that a veteran may not be insured under both programs simultaneously other than as provided by paragraph (2)(B), we interpret subsection (d)(3) to mean that a veteran may not be insured under both programs simultaneously except if a veteran who is insured under SDVI elects to be insured under VALife during the initial two-year enrollment period. Also, neither this statute nor the VALife statute addresses whether a policyholder who is insured under 38 U.S.C. 1922(a) is eligible to apply for VALife after December 31, 2025, if the policyholder surrenders his or her life insurance policy or informs VA that he or she desires to terminate coverage in order to become eligible for VALife. VA proposes to add new § 8.35 to 38 CFR part 8 that would explain the eligibility criteria for those insured under 38 U.S.C. 1922(a) to purchase VALife after December 31, 2025. Veterans would be eligible to purchase VALife coverage upon surrender or cancellation of the policy along with a written statement to VA that the policyholder desires to terminate his or her existing life insurance coverage in order to apply for VALife and initiate the two-year waiting period before VALife will pay a death benefit to the policyholder's beneficiary. This statement would be in a form that is prescribed by the Secretary.

12. Issuance of Coverage under 38 U.S.C. 1922B Following Additional Elections.

Under 38 U.S.C. 1922B(a)(4)(A), a veteran may elect to be insured for between \$10,000 and \$40,000, in \$10,000 increments. VA proposes to add a new § 8.36 to 38 CFR part 8 that would explain that veterans who do not elect the statutory maximum

amount of VALife coverage may still apply for additional VALife coverage at a later date, but the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) must be satisfied before the additional coverage amount of VALife is in force. Allowing veterans to apply for additional VALife coverage would be an important feature of VALife for policyholders, as life circumstances may change, such as marriage or the birth of a child. These life events may create the need for additional coverage. However, the two-year waiting period allows for addressing any adverse selection risks while providing this flexibility to insureds. This is consistent with private, commercial insurance provider practices.

Executive Orders 12866 and 13563

Executive Orders (EO) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). EO 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this proposed rule is not a significant regulatory action under EO 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). This proposed rule would

generally be small business neutral as it implements statutory provisions that only allow the United States to issue life insurance coverage to veterans with service-connected disabilities. 38 U.S.C. 1922B(a)(1) (“[T]he Secretary shall carry out a service-disabled veterans insurance program under which a veteran is granted insurance by the United States against the death of such individual occurring while such insurance is in force.”). Although there are statutes in 38 U.S.C. 1901-1988 that allow VA to purchase a large group life insurance policy from a private commercial insurer, those statutory authorities only apply to the Servicemembers’ Group Life Insurance Program, which provides life insurance coverage to Service members and their dependents and former Service members, and they do not provide VA with the authority to purchase a group life insurance policy from a private insurer for purposes of providing VALife coverage. As such, the overall impact of this proposed rule would be of no benefit or detriment to small businesses, because these insurance policies would only be issued by the United States to veterans with service-connected disabilities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule includes provisions constituting new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. If OMB does not approve the collection of information as requested, VA will immediately remove the provisions containing the collection of information or take such other action as is directed by OMB.

Comments on the new collections of information contained in this rulemaking should be submitted through www.regulations.gov. Comments should indicate that they are submitted in response to “RIN 2900-AR53; National Service Life Insurance - Veterans Affairs Life Insurance (VALife) Program Amendments” and should be sent within 60 days of publication of this rulemaking. The collections of information associated with this rulemaking can be viewed at: www.reginfo.gov/public/do/PRAMain.

OMB is required to make a decision concerning the collections of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on new collection of information in-

- Evaluating whether the new collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the new collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The collections of information associated with this rulemaking contained in 38 CFR 8.0(g), 8.7, 8.11, 8.19, 8.35 and 8.36 are described immediately following this paragraph, under their respective title.

Title: Application for Veterans' Affairs Life Insurance (VALife).

OMB Control No: 2900-XXXX (New/TBD)

CFR Provision: 38 CFR 8.0(g) and 8.36

- *Summary of collection of information*: The new collection of information in proposed 38 CFR 8.0(g) and 8.36 would require individuals applying for or increasing VALife coverage to provide certain information to VA.
- *Description of need for information and proposed use of information*: The information would be used by VA to determine the eligibility of veterans with

service-connected disabilities who elect to apply for, or increase, VALife coverage.

- *Description of likely respondents:* Veterans, veterans' VA-appointed fiduciaries, and veterans' state-appointed guardians and custodians and attorneys-in-fact.
- *Estimated number of respondents:* 185,000 annually.
- *Estimated frequency of responses:* One time per application.
- *Estimated average burden per response:* 10 minutes.
- *Estimated total annual reporting and recordkeeping burden:* Based on a projected 185,000 annual respondents and an average burden per response of 10 minutes, VA estimates a total annual reporting and recordkeeping burden of 30,833 hours.
- *Estimated cost to respondents per year:* VA estimates the total information collection burden cost to be \$863,632 per year (30,833 burden hours for respondents x \$28.01 per hour).*

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for hourly wage for "all occupations" of \$28.01 per hour. This information is available at https://www.bls.gov/oes/current/oes_nat.htm#13-0000.

Title: Veterans' Affairs Life Insurance (VALife) Policy Maintenance Form.

OMB Control No: 2900-XXXX (New/TBD)

CFR Provisions: 38 CFR 8.7, 8.11, and 8.19

- *Summary of collection of information:* The new collection of information in proposed 38 CFR 8.7 would require an individual to use the new form to request reinstatement for VALife. The new collection of information in proposed § 8.11(k) would require an individual to use the new form to surrender the VALife policy

and request payment of the cash value. An individual could also use the new form to request beneficiary changes on a VALife policy under proposed § 8.19(a).

- *Description of need for information and proposed use of information:* The information would be used by VA to reinstate a VALife policy or to complete a insured's request to surrender coverage under VALife.
- *Description of likely respondents:* Veterans, veterans' VA-appointed fiduciaries, and veterans' state-appointed guardians and custodians and attorneys-in-fact.
- *Estimated number of respondents:* 26,672 annually.
- *Estimated frequency of responses:* One action per form.
- *Estimated average burden per response:* 5 minutes.
- *Estimated total annual reporting and recordkeeping burden:* Based on a projected 26,672 annual respondents and an average burden per response of 5 minutes, VA estimates a total annual reporting and recordkeeping burden of 2,223 hours.
- *Estimated cost to respondents per year:* VA estimates the total information collection burden cost to be \$62,266 per year (2,223 burden hours for respondents x \$28.01 per hour).*

* To estimate the total information collection burden cost, VA used the Bureau of Labor Statistics (BLS) median hourly wage for hourly wage for "all occupations" of \$28.01 per hour. This information is available at https://www.bls.gov/oes/current/oes_nat.htm#13-0000.

Title: Veterans' Affairs Life Insurance (VALife) Surrender/Conversion Form.

OMB Control No: 2900-XXXX (New/TBD)

CFR Provisions: 38 CFR 8.35

- *Summary of collection of information:* The new collection of information in proposed 38 CFR 8.35 would require an individual to confirm their surrender of any current SDVI coverage at the time they apply for VALife.
- *Description of need for information and proposed use of information:* The information would be used by VA to surrender an existing SDVI policy so that a Veteran can apply for VALife.
- *Description of likely respondents:* Veterans, veterans' VA-appointed fiduciaries, and veterans' state-appointed guardians and custodians and attorneys-in-fact.
- *Estimated number of respondents:* 26,672 annually.
- *Estimated frequency of responses:* One action per form.
- *Estimated average burden per response:* 5 minutes.
- *Estimated total annual reporting and recordkeeping burden:* Based on a projected 26,672 annual respondents and an average burden per response of 5 minutes, VA estimates a total annual reporting and recordkeeping burden of 2,223 hours.
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Assistance Listing

The Assistance Listing number and title for the program affected by this document is 64.103, Life Insurance for Veterans.

List of Subjects in 38 CFR Part 8

Life insurance, Veterans.

Signing Authority:

Denis McDonough, Secretary of Veterans Affairs, approved this document on June 30, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

Assistant Director,

Office of Regulation Policy & Management,

Office of General Counsel,

Department of Veterans Affairs.

For the reasons stated in the preamble, VA is proposing to amend 38 CFR part 8 as set forth below:

PART 8—NATIONAL SERVICE LIFE INSURANCE

1. The authority citation for part 8 continues to read as follows:

Authority: 38 U.S.C. 501, 1901-1929, 1981-1988, unless otherwise noted.

2. Amend § 8.0 by:

- a. Revising paragraph (e); and
- b. Adding paragraphs (f), (g), and (h).

The revision and additions read as follows:

§ 8.0 Definitions of terms used in connection with title 38 CFR, part 8, National Service Life Insurance.

* * * * *

(e) *What does the term “guardian” mean?* The term *guardian* means any state-appointed guardian or conservator, attorney-in-fact, or VA-appointed fiduciary, as defined in § 13.20, who is responsible for receiving VA benefits in a fiduciary capacity on behalf of the insured or the beneficiary, or to take the actions listed in § 8.32.

Note to paragraph (e): If a VA-appointed fiduciary and either a state-appointed guardian/conservator or attorney-in-fact are not the same individual and both attempt to take conflicting actions on an incompetent insured’s policy, the VA-appointed fiduciary shall have the exclusive authority to take actions on the policy.

(f) *What does the term “Veterans’ Affairs Life Insurance (VALife)” mean?* The term *Veterans’ Affairs Life Insurance*, or *VALife* in its abbreviated form, means a policy of insurance that is issued under section 1922B of title 38 U.S.C.

(g) *What does the term “application for VALife” mean?* The term *application for VALife* means a properly completed application form submitted online or through another medium prescribed by the Secretary.

(h) *What does the term “beneficiary” mean?* The term “beneficiary” means a principal or contingent beneficiary designated by the insured.

3. Amend § 8.1 by:

- a. Revising the heading;
- b. Revising paragraph (a);
- c. Adding Note 3 in paragraph (b);
- d. Removing “Yes,” and adding in its place “For insurance other than VALife,” in paragraph (c).

The revisions and addition read as follows:

§ 8.1 Effective date for an insurance policy issued under section 1922(a) or 1922B of title 38 U.S.C.

(a) What is the effective date of the policy? The effective date is the date policy coverage begins. Benefits due under a policy issued under section 1922(a) are payable any time after the effective date. Benefits due under a policy issued under section 1922B are payable any time two years after the effective date.

(b) * * *

Note 3 to paragraph (b): If you apply for insurance coverage through an electronic medium, the date of delivery of the premium payment will be the date you authorize payment of the initial premium. In cases where the authorization does not result in the required premium payment because there were insufficient funds to cover the full initial premium, the delivery date of the premium payment will be the date your full initial premium is received by VA.

* * * * *

4. Amend § 8.2 by adding paragraph (e) to read as follows:

§ 8.2 Payment of premiums.

* * * * *

(e) If a policyholder enrolls in VALife for an amount less than the statutory maximum and elects to apply for additional coverage at a later date and dies before completing the two-year waiting period for the additional VALife coverage amount, the beneficiary shall be refunded premiums that were paid for the additional VALife coverage, plus interest, in accordance with 38 U.S.C. 1922B(c)(3)(A). If a policyholder surrenders or cancels a VALife policy during the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) before coverage is in force, the United States shall not return to the policyholder the premiums that were paid to purchase the coverage.

5. Revise § 8.6 to read as follows:

§ 8.6 Calculation of Time Period; Veteran's Age.

(a) If the last day of a time period specified in § 8.2 or § 8.3, or the last day allowed for filing an application for National Service Life Insurance or for applying for reinstatement thereof, or paying premiums due thereon, falls on a Saturday, Sunday, or legal holiday, the time period will be extended to include the following workday.

(b) For VALife, the premium will be determined using the age of the veteran at his or her nearest birthday on the effective date of the policy.

(c) For purposes of determining a veteran's eligibility for VALife under 38 U.S.C. 1922B(a)(3)(A), the age of the veteran at his or her last birthday prior to the date of application will be used.

(d) For purposes of determining a veteran's eligibility for VALife under 38 U.S.C. 1922B(a)(3)(B), with respect to a veteran who has attained 81 years of age, an initial grant of service connection for a new or secondary condition for which the veteran applied for disability compensation before attaining 81 years of age will satisfy the eligibility criteria; however, VA will not grant insurance to such a veteran based on an increase in an existing disability rating, a grant of individual unemployability under 38 CFR 4.18, or a finding of incompetency under 38 CFR 3.353. VA will not issue a VALife policy to a veteran over age 95.

6. Amend § 8.7 by:

- a. Revising the heading;
- b. Removing "Any policy" and adding in its place "Subject to paragraph (e), any policy" in paragraph (a); and
- c. Adding paragraph (e).

The revisions and addition read as follows:

§ 8.7 Reinstatement.

* * * * *

(e) Coverage issued under VALife that lapses for non-payment of premiums may only be reinstated if the former policyholder submits all premiums in arrears from their respective due dates, plus interest, to reinstate the coverage within two years of the date of the lapse and has not yet reached age 81.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-XXXX.)

7. Amend § 8.10 by revising paragraph (a)(3) to read as follows:

§ 8.10 How paid.

(a) * * *

(3) Issued under sections 1904(c), 1922(a), and 1922B of title 38 U.S.C.

* * * * *

8. Amend § 8.11 by:

a. Revising the heading;

b. Adding at the end in paragraph (a) “This paragraph shall not apply to VALife.”;

c. Removing “Upon” and adding in its place “For insurance other than VALife, upon” in paragraph (b); and

d. Adding paragraphs (j) and (k).

The revisions and additions read as follows:

§ 8.11 Cash value.

* * * * *

(j) Cash values that accrue for VALife will be developed using a multiple of the 1941 Commissioners Standard Ordinary Mortality Table and an interest rate of 3.5 percent per annum. Cash values will not accrue and will not be payable until the completion of the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2). If a VALife policy lapses or is surrendered before completion of the two-year waiting period, then any amounts that VA has collected, such as premium payments, shall be returned to the credit of the VALife revolving fund that is established under 38 U.S.C. 1922B(a)(5)(A)(i). If a veteran enrolls in VALife for an amount less than the statutory maximum and elects to apply for additional coverage at a later date, the cash value on the additional amount of coverage would not begin accruing until the end of the two-year waiting period for the additional coverage.

(k) The United States will pay the cash value, in full or in part, of any VALife policy, subject to the limitations in § 8.11(j), to insureds upon request through electronic

medium or other method prescribed by the Secretary. Unless otherwise requested by the insured, a surrender will be deemed effective as of the end of the premium month in which the application for cash surrender is delivered to the Department of Veterans Affairs, or as of the date of payment for the cash value, whichever is later.

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-XXXX.)

* * * * *

9. Amend § 8.13 by adding paragraph (e) to read as follows:

§ 8.13 Policy loans.

* * * * *

(e) For VALife, the United States shall only issue policy loans if the Secretary determines that offering loans is administratively and actuarially sound.

10. Amend § 8.14 by adding paragraph (d) to read as follows:

§ 8.14 Provision for extended term insurance—other than 5-year level premium term or limited convertible 5-year level premium term policies.

* * * * *

(d) VALife shall not be extended automatically as term insurance until the insured has paid the required premiums during the two-year waiting period that is imposed by 38 U.S.C. 1922B(c)(2) before VALife coverage is in force.

11. Revise § 8.15 to read as follows:

§ 8.15 Provision for paid-up insurance; other than 5-year level premium term or limited convertible 5-year level premium term policies.

(a) If a National Service Life Insurance policy on any plan other than 5–year level premium term or limited convertible 5–year level premium term plan has not been surrendered for cash, upon written request of the insured and complete surrender of the insurance with all claims thereunder, after the expiration of the first policy year and while the policy is in force under premium-paying conditions, the United States will issue paid-up insurance for such amount as the cash value less any indebtedness, and a charge for administrative cost for insurance issued under 38 U.S.C. 1925, will purchase when applied as a net single premium at the attained age of the insured. For this purpose the attained age is the age on the birthday anniversary nearest to the effective date of the policy plus the number of years and months from that date to the date the paid-up insurance becomes effective. Such paid-up insurance will be effective as of the expiration of the period for which premiums have been paid and earned; and, any premiums paid in advance for months subsequent to that in which the application for paid-up insurance is made shall be refunded to the insured. The paid-up insurance, if eligible to participate in and to receive dividends, shall be with the right to dividends. The insured may at any time surrender the paid-up policy for its cash value or obtain a loan on such paid-up insurance.

(b) The United States shall not issue paid-up insurance under VALife until the insured has paid premiums during the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) before VALife coverage is in force.

12. Revise § 8.19 to read as follows:

§ 8.19 Beneficiary and optional settlement changes.

(a) The insured shall have the right at any time, and from time to time, and without the knowledge or consent of the beneficiary to cancel or change a beneficiary and/or optional settlement designation. A change of beneficiary or optional settlement to

be effective must be made by notice in writing signed by the insured and forwarded to the Department of Veterans Affairs by the insured or designated agent, and must contain sufficient information to identify the insured. A beneficiary designation and an optional settlement selection, but not a change of beneficiary, may be made by last will and testament duly probated. Upon receipt by the Department of Veterans Affairs, a valid designation or change of beneficiary or option shall be deemed to be effective as of the date of execution. Any payment made before proper notice of designation or change of beneficiary has been received in the Department of Veterans Affairs shall be deemed to have been properly made and to satisfy fully the obligations of the United States under such insurance policy to the extent of such payments.

(b) If a beneficiary has been determined to have intentionally and wrongfully killed the insured, the provisions found in 38 CFR 9.5(e) shall be followed.

13. Add § 8.35 to read as follows:

§ 8.35 Eligibility for those insured under 38 U.S.C. 1922(a) to purchase insurance under 38 U.S.C. 1922B after December 31, 2025.

An insured under a Legacy Service Disabled Veterans' Insurance policy shall be eligible to purchase VALife coverage after December 31, 2025, upon cancellation of his or her Legacy Service Disabled Veterans' Insurance policy and surrender of any cash value that his or her coverage has accrued in accordance with 38 CFR 8.11. The policyholder must also submit a statement in a form that is prescribed by the Secretary, which clearly indicates that the policyholder desires to terminate his or her existing life insurance coverage in order to apply for VALife and initiate the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) before such VALife coverage is in force.

(Authority: 38 U.S.C. 501, 1901-1929, 1981-1988)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-XXXX.)

14. Add § 8.36 to read as follows:

§ 8.36 Issuance of coverage under section 1922B of title 38 U.S.C. following additional elections.

An insured who elects less than the maximum amount of VALife coverage under 38 U.S.C. 1922B(a)(4)(A) shall remain eligible to purchase additional VALife coverage up to the VALife statutory maximum. Any insured who elects to apply for additional VALife coverage shall be subject to the two-year waiting period imposed by 38 U.S.C. 1922B(c)(2) before such additional VALife coverage is in force.

(Authority: 38 U.S.C. 501, 1901-1929, 1981-1988)

(The Office of Management and Budget has approved the information collection provisions in this section under control number 2900-XXXX.)

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